

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MDV-57/50345

PRELIMINARY RECITALS

Pursuant to a petition filed August 29, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Sawyer County Dept. of Social Services in regard to medical assistance, a hearing was held on October 8, 2001, at Hayward, Wisconsin.

The issue for determination is whether the petitioner is ineligible for medical assistance as the result of a divestment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:
(petitioner)

By:
(son)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Mimi Sawyer, ESS
Sawyer County Human Services
105 E. Fourth Street
PO Box 730
Hayward, WI 54843

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxx) is a resident of a nursing home in Sawyer County.
2. The petitioner entered the nursing home on June 14, 2001. Her husband had entered the nursing home on March 27, 2001.
3. The petitioner quit-claimed the house she lived in to her son on April 3, 2001.
4. The house the petitioner quitclaimed to her son was worth \$103,800 when she did so.

DISCUSSION

A person whose assets exceed \$2,000 is ineligible for medical assistance. §49.47(4)(b)3g, Wis. Stats. Medical assistance law prevents a recipient from reaching this limit by divesting assets. A divestment occurs when an applicant, or person acting on the applicant's behalf, transfers assets for less than their fair market value during the lookback period. The lookback period is generally 36 months. §49.453(1)(f), Wis. Stats. The issue here is whether the petitioner divested funds when she quitclaimed her house, which the parties agree was worth \$103,800, to her son on April 3, 2001.

The petitioner sought medical assistance after she entered the nursing home on June 14, 2001. (The evidence at the hearing stated that she entered the nursing home on April 14, 2001. After the hearing, her son faxed a statement saying that she entered on June 14, 2001. I will assume that she entered on June 14, 2001 because the date is more favorable to the petitioner but does not affect the decision.) Her representative contends that this was not a divestment because it was done for probate and estate purposes rather than to receive medical assistance. While it is true that the *Medical Assistance Handbook*, Appendix, §14.4.0.1, states there is no divestment if the person who made the divestment shows that the purpose was not to receive medical assistance, no such showing was made here. The petitioner's representative did not point out any estate advantages to quitclaiming the house (other than the obvious one of not having to use proceeds from it to pay for the petitioner's medical care). Further, even if there were advantages it would be difficult to believe that the main purpose of this transfer was not to obtain eligibility for medical assistance. The petitioner's husband had entered the nursing home only a week before the transfer and the petitioner entered two months later. She appeared old and frail at the hearing, and she presented no evidence that her infirmities came suddenly. Under these circumstances I find that the county agency correctly found the petitioner ineligible for medical assistance as the result of a divestment.

CONCLUSIONS OF LAW

The county agency correctly found that the petitioner is ineligible for medical assistance because she divested assets when she quitclaimed her house to her son.

NOW, THEREFORE, it is **ORDERED**

That the petition herein be and the same hereby is dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau Claire, Wisconsin, this __24th__ day of _October_____, 2001.

/s

Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals
1121/MDO

cc: Tom Leighty- Sawyer Co.
Susan Wood
(son)